

General Information Letter: A bank is not a "retailer" for purposes of the replacement tax investment credit.

June 5, 2000

Dear:

This is in response to your letter dated January 15, 2000. Please excuse our delay in providing this response. For some reason your letter did not arrive in the Department of Revenue Legal Section until May 15, 2000.

Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c), which can be obtained at the following website:

<http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter you have stated the following:

I am enclosing a preliminary draft of the IL-477 form for your review.

As you can see, xxxxxxxxxxxxxxxxxxxxxxxxxxxx is a new entity and therefore qualifies for the additional investment tax credit. My question is whether a bank is considered a retail business eligible for the credit. It is my opinion that it is providing retail services to the public and would qualify.

Only the equipment would qualify. Leasehold improvements, software, and autos do not qualify for the credit. Before I file the return please advise me if you agree.

### **Response**

The Investment Credit is authorized by Illinois Income Tax Act (IITA) §201(e). The Act defines "retailing" as "the sale of tangible personal property or services rendered in conjunction with the sale of tangible consumer goods or commodities." Banking services are clearly not tangible personal property. The only question is whether they might somehow qualify as "services rendered in conjunction with" sales of tangible goods or commodities.

Department of Revenue Regulations at 86 Ill. Admin. Code 100.2100(e)(9) lists examples of qualifying services as uncrating, cleaning, assembling, delivery or installation, but only if such services are "in conjunction with a particular sale." It appears that the "services" contemplated by the act must have an intimate connection to sales of tangibles. It would not appear that banking services are sufficiently connected.

The same section of the regulations states that "service professions which do not involve the transfer of tangible personal property other than as an incident to the service performed" are not considered retailing operations. That would rule out banking services. It also suggests that regulations promulgated under the

Service Occupation Tax might help to distinguish between service and retailing professions and examination of those rules provides no support for your position.

It is my conclusion that banking cannot qualify as a retailer under IITA §201(e).

Please note, however, that the Enterprise Zone Investment Credit (IITA §201(f)) has no requirement that the taxpayer carry out retailing activities. You may wish to examine your client's situation with respect to local enterprise zones as an alternative approach.

Please do not hesitate to call me at (217) 782-2844 if you have further questions. As stated above, this is a general information letter that does not constitute a statement of policy that applies, interprets or prescribes tax law. It is not binding on the Department as a definitive statement of law. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp  
Staff Attorney -- Income Tax